TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1952

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SUPREME COURT, U.S.

No. 17

KWONG HAI CHEW, PETITIONER,

vs.

CAPTAIN SVEND COLDING, MASTER OF THE SS "SIR JOHN FRANKLIN," AND EDWARD J. SHAUGHNESSY, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 28, 1952
CERTIORARI GRANTED APRIL 28, 1952

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United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA, *ex rel.*
KWONG HAI CHEW,

Relator-Appellant,

against

CAPT. SVEND COLDING, Master of the S.S. "Sir John Franklin," and EDWARD J. SHAUGHNESSY, District Director of Immigration and Naturalization at the Port of New York,

Respondents-Appellees.

Statement Under Rule 15(B)

A writ of habeas corpus was sued out on April 3, 1951, by the relator, Kwong Hai Chew, against Capt. Svend Colding, Master of the S.S. "Sir John Franklin" and against Edward J. Shaughnessy, District Director of Immigration and Naturalization at the Port of New York. Respondent District Director filed a return to the said writ of habeas corpus, and an amended return thereto on April 19, 1951. Relator filed a traverse, and an amended traverse on the 23rd day of April 1951. The writ came on to be heard on the 16th, 17th and 18th days of April 1951 before Honorable CLARENCE G. GALSTON. In accordance with the opinion of Judge GALSTON, filed on the 11th day of May 1951, the writ of habeas corpus was dismissed by an order filed May 21, 1951. Notice of appeal was filed May 28, 1951.

The relator was moved from the vessel, S.S. "Sir John Franklin," to Ellis Island for safe keeping by agreement of the parties pending determination of the proceedings.

There has been no change of parties or of attorneys.

Writ of Habeas Corpus

UNITED STATES DISTRICT COURT

DIVISION, EASTERN DISTRICT OF NEW YORK

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To: *Capt. Svend Colding, Master of the S.S. Sir John Franklin; Attorney General of the United States; Edward J. Shaughnessy, District Director of Immigration and Naturalization at the Port of New York, and his deputies and any and all persons concerned in and having the custody of* KWONG HAI CHEW;

YOU ARE HEREBY COMMANDED, that the body of Kwong Hai Chew by you restrained of his liberty, as it is said detained by whatsoever names the said Kwong Hai Chew may be detained, together with the day and cause of his being taken and detained, you have before the Honorable CLARENCE G. GALSTON, Judge of the United States District Court in and for the Eastern District of New York at the Court Room #214 of said Court, in the City of New York at 10:30 o'clock A.M., on the 6th day of April, 1951, then and there do, submit to and receive whatsoever the said Judge shall then and there consider in that behalf; and have you then and there this writ.

Writ of Habeas Corpus

WITNESS the Honorable ROBERT A. INCH, United States District Judge, at the Court House this 3rd day of April, A. D. 1951.

PERCY G. B. GILKES,
Clerk.

By
Deputy Clerk.

Let the Writ of Habeas Corpus issue. Ordered that a copy of the petition and Writ be served on the United States Attorney for this District, and that a copy of the petition together with the original Writ be delivered to the respondents.

Dated: Brooklyn, N. Y., April 3rd, 1951.

CLARENCE G. GALSTON,
U. S. D. J.

Petition for Writ of Habeas Corpus

DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

To: *The Honorable The Judges of the United States District Court for the Eastern District of New York:*

The petition of Kwong Hai Chew by his attorney Ira Gollobin, respectfully shows:

FIRST: The petitioner is now actually detained on board the S.S. Sir John Franklin now docked at Pier 7, Bush Terminal, Brooklyn, New York, having been, on information and belief, so detained on the arrival of said vessel on March 29, 1951.

SECOND: On information and belief the petitioner is so detained solely by virtue of an order issued by Capt. Svend Colding, Master of said vessel and/or a detaining order issued by the Immigration and Naturalization Service.

THIRD: Petitioner is a legally resident alien, having been duly admitted for permanent residence in the United States on January 10, 1945 and having maintained since that time continuously his legal residence in the United States.

FOURTH: Petitioner has duly applied for naturalization and there is now pending before this Court said petition which was duly filed on April 6, 1950.

FIFTH: Petitioner is married to an American citizen and has his home in the United States and has not established a residence in any other country but the United States.

SIXTH: That heretofore petitioner signed the articles of the S.S. Sir John Franklin as a Chief Steward and duly served in that capacity and is now returning from a voyage aboard said vessel to its home port of New York.

SEVENTH: On information and belief that petitioner has not been served with an order of arrest nor any legal process advising him as to the cause or basis of his detention, nor has he been advised to appear at any hearing or called to report to any immigration official, nor informed that he had failed in any respect to comply with any provision of the Immigration and Naturalization Laws.

EIGHTH: That petitioner has never been arrested nor charged with any crime either in this country or in any other place.

NINTH: That under the circumstances aforesaid, the application of the restraint to relator is arbitrary and capricious and a denial of due process of law in violation of the Fifth Amendment to the Federal Constitution.

TENTH: On information and belief the cause or pretense of the restraint and imprisonment of the petitioner is as aforesaid and petitioner is not imprisoned or detained by virtue of any process of mandate issued by any court of the United States or any judge thereof, nor is he committed or detained by virtue of a final judgment or decree of any competent tribunal made in a special proceeding

instituted for any cause or by virtue of executive or process issued upon a judgment, decree or final order other than as aforesaid, and the attempt to detain him by the Captain of the S.S. Sir John Franklin and/or the Immigration Service is unfair.

WHEREFORE, your petitioner prays that this Court may proceed in a summary way to determine the facts in this case in that regard and the legality of the imprisonment, restraint and detention of the petitioner as law and justice may require, and for such other and further relief as to the Court may seem just and proper.

Dated: New York, March 30, 1951.

KWONG HAI CHEW,
Petitioner.

By: IRA GOLLOBIN,
Attorney.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

IRA GOLLOBIN, being duly sworn, deposes and says:

I am the attorney for the petitioner herein. I have read the foregoing petition and the facts therein stated are true of my own knowledge, and as to the matters therein stated to be alleged upon information and belief, I believe said petition to be true.

The reason why this verification is made by me rather than the petitioner personally is that the petitioner is now

detained on board the S.S. Sir John Franklin, which makes it difficult to have this petition signed personally.

I am authorized to sue out the writ of habeas corpus herein. Such authorization is in writing.

IRA GOLLOBIN.

Sworn to before me this
30th day of March, 1951.

HENRIETTA ADLER
Notary Public, State of New York
Qualified in Bronx County
No. 03-0021000
Certs. filed in New York and Bronx
Clerks and Registers Office
Commission Expires March 30, 1953

Return to Writ of Habeas Corpus

DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

I, OSWALD I. KRAMER, attorney in the office of the District Counsel, Immigration and Naturalization Service, United States Department of Justice, hereby certify and make return to the Writ of Habeas Corpus, based upon the records of the Immigration and Naturalization Service as follows:

1. The relator, Kwong Hai Chew, is an alien, a native and citizen of China, who last arrived in the United States at the port of San Francisco, on March 10, 1951, as a member of the crew of the S.S. "Sir John Franklin" to resume residence in the United States after a voyage abroad.

2. He was examined on that day by an Immigrant inspector concerning his eligibility for admission into the United States.

3. Upon the basis of information of a confidential nature, the immigrant inspector temporarily excluded the relator under Section 175.57 of Title 8 of the Code of Federal Regulation as an alien whose entry is deemed prejudicial to the public interest.

4. An order was thereupon served upon the Master of thte S.S. "Sir John Franklin" directing the said Master to detain the relator on board said vessel at all United States ports.

5. After the service of the aforesaid order to detain on board, the S.S. "Sir John Franklin" proceeded coastwise, with relator on board, and arrived at the Port of New York within the Eastern District of New York on or about March 29, 1951.

6. Upon its arrival at the Port of New York, the temporary exclusion of relator was continued and a further order was served upon the Master of said vessel on March 30, 1951 to detain the relator on board said vessel at all United States ports.

7. The case has been reported to the Attorney General under the provisions of Section 175.57 of Title 8 of the Code of Federal Regulations and in due course, the issue of whether relator should be permanently excluded as an alien whose entry will be prejudicial to the public interest will be determined.

8. The writ of habeas corpus has been prematurely brought since no final determination as to his right to enter the United States has been made. Relator has not, therefore, exhausted his administrative remedies.

9. Upon information and belief, the relator is now in the custody of the Master of the S.S. "Sir John Franklin" and is not in the custody of the United States Immigration and Naturalization Service or the Commissioner of Immigration and Naturalization.

WHEREFORE, it is respectfully prayed that the writ of habeas corpus be dismissed in all respects.

Dated: New York, N. Y.
April 13, 1951.

OSWALD I. KRAMER.

Traverse

DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

Relator KWONG HAI CHEW by IRA GOLLOBIN, his attorney, for his traverse to the return herein alleges:

1. Repeats and realleges each and every allegation of the petition herein as if fully and at length set forth herein.

2. Denies each and every allegation contained in the return herein except those allegations heretofore admitted or affirmatively alleged in the petition herein.

3. The return is insufficient in law to justify the detention of petitioner herein.

WHEREFORE, petitioner respectfully prays that the writ be sustained.

IRA GOLLOBIN,
Petitioner's Attorney

Traverse

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

IRA GOLLOBIN, being duly sworn, deposes and says: That he has read and knows the contents of the foregoing traverse, that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true. The reason this traverse is executed by petitioner's attorney is that petitioner is confined aboard the S S. Sir John Franklin, and is unable thereby to have any traverse executed by him verified before a Notary Public or other person authorized to take oaths.

IRA GOLLOBIN.

Sworn to before me this
11th day of April, 1951.

HENRIETTA ADLER
Notary Public, State of New York
Qualified in Bronx County
No. 03-0021000
Certs. filed in New York and Bronx
Clerks and Registers Office
Commission Expires March 30, 1953

Transcript of Record

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

Civ. M-1528.

[SAME TITLE]

Brooklyn, New York,
April 16, 1951.

Before:

HONORABLE CLARENCE J. GALSTON,
U. S. D. J.

Appearances:

IRA GOLLOBIN, Esq., Attorney for the Relator.

FRANK J. PARKER, Esq., United States Attorney for the Eastern District of New York,

By: MORRIS K. SIEGEL, Esq., Assistant United States Attorney.

MESSRS. LORD, DAY & LORD, Attorneys for Captain Colding and S.S. Sir John Franklin,

By: JOHN T. NOONAN, Esq., of Counsel

OSWALD I. KRAMER, Esq., Representing the Immigration and Naturalization Service.

The Court: I will hear the petitioner.

Mr. Gollobin: May it please your Honor, the relator here, as indicated in the petition for the writ is a person who is a legal resident of the United States and who for

many years has pursued his calling as a seaman and who, during his entire life, both in this country and his native birthplace, was never arrested or ever had any difficulty with the authorities.

During his stay in the United States he has become a legal resident and has been for the past six years.

He is married to an American citizen, a person born in this country with whom he is residing and in every way comports himself in a manner that a person admitted to this country is required to do.

Last year, in the normal course of his occupation, he being a Chief Steward, signed articles at the Port of New York and proceeded on a foreign voyage.

As far as he was concerned he had no indication whatsoever, your Honor, but that that was not perfectly within his rights. In fact, as of April of last year, he had filed a petition for naturalization which would certainly seem to indicate to him that he was a person who could with perfect propriety and without fear of any subsequent difficulty, make such a trip.

Without any previous notice to him or any other indication, on his return, when the ship first stopped at San Francisco, he was ordered detained on board and this is the first occasion, in his entire time since he became a legal resident, that he ever had any indication that he was a person that the Government felt was inadmissible to the United States.

I would submit, your Honor, that under these circumstances the power that the Government has claimed under these circumstances, under which he, without any hearing, without any conversations, without any witnesses, without any notice, is now to be deemed a person inadmissible to the United States, despite the fact that he has a prior residence and has married a citizen and has pending a

petition for naturalization—that under those circumstances the action of the Government is only one that could be defined as one depriving him of his rights in an arbitrary fashion.

If the Government should succeed it would be giving to itself an authority far and beyond any of which should be safely entrusted to an administration official.

Here, without any hearing, if they can exclude a person who has established a legal residence in the United States—and I might add in this connection that since this man signed articles in New York, the effect of this proceeding is to stamp this man a wanderer aboard a boat for the rest of his life because where are they to dispose of him? His legal rights are to return to the port where he signed articles and under these circumstances he could not go ashore and terminate a voyage—he must remain on board. He cannot be disposed of by dumping him in any foreign port.

In view of all these circumstances to require him, without a hearing, to be required to remain on board a vessel I submit is an arbitrary action and violates the constitutional rights that an alien is entitled to claim under Article 5 of the amendment of the Constitution of the United States.

The Court: When he signed these articles in the United States, pursuant to the articles where was he to go?

Mr. Gollobin: Mr. Noonan who is representing the Isbrandtsen Steamship Company might answer that better than I, your Honor.

The Court: What about that, Mr. Noonan?

Mr. Noonan: It was a voyage to the Far East, your Honor. It was just completed a week ago and since that time the vessel has been on coastwise voyage, picking up

cargo for a foreign voyage starting the end of this week, to Hong Kong and so forth.

The service of the Isbrandtsen Line is a Far East service.

The Court: All right. Mr. Siegel, what have you to say?

Mr. Siegel: May it please the Court, it may well be that the petitioner is a lawful alien in the United States, or has been for some time, but the law is well settled that every departure from the United States by an alien constitutes the necessity of a new re-entry and he is subject to scrutiny by the Attorney General and his agency as to whether or not he is a person admissible as an alien.

The law does not give any alien a natural right to enter the United States, he can only enter the United States upon certain regulations that have been prescribed by Congress and by the Attorney General.

Now in this case, may it please your Honor, the immigration inspector has reliable information and has detained this man on board ship by reason of the fact that his presence in the United States would be prejudicial to the interests of the Government.

The matter has been submitted to the Attorney General for final determination. We feel that the petition here has been prematurely brought because the Attorney General has not had sufficient time to administratively process this case.

We feel that the Attorney General will determine that this man should not be permitted to enter the United States because of a security risk.

Therefore, your Honor, we respectfully ask that this writ be dismissed.

The Court: I will take testimony.

Mr. Siegel: Your Honor, on the question of whether or not we have the right to disclose the nature of our

information or the reason for our exclusion, I might say has been well settled by the Attorney General of the United States.

The Court: That is twice that you have told me that matters have been well settled. I am always skeptical when an attorney tells me that a thing is well settled. My exploits in the law over a period of 50 years lead me to conclude that there are very few things well settled.

Mr. Siegel: I call your Honor's attention respectfully to a recent decision of the Supreme Court of the United States, *ex rel. Knauf,* which received much publicity as your Honor probably is aware, and in that case the Court said, that when the Attorney General determines that a person is a security risk he cannot be compelled to disclose the information or the facts upon which he determined his conclusion.

We have had instances in this same Court before other Judges—

The Court: Well, then, what you mean is well settled before some other Judge?

Mr. Siegel: By the Supreme Court of the United States, your Honor, and I thought that this Court might perhaps be familiar with the *Knauf* case.

The Court: I am aware of the case but I wish to hear what the relator has to say here.

KWONG HI CHEW, the Relator, called as a witness in his own behalf, having been first duly sworn, testified as follows:

Direct examination by Mr. Gollobin:

Q. Are you the relator in this proceeding? A. Yes.

Q. And were you legally admitted to the United States? A. Yes.

The Court: That is a conclusion. If you will ask the witness how he arrived in the United States and obtained the status which he would describe as "legal admission" that would be proper.

Mr. Gollobin: Thank you, your Honor, I will pursue that line of inquiry.

Q. Did you ever apply at an American Consul for a visa to enter the United States as a permanent resident? A. Yes, sir.

Q. Did you ever secure such a visa? A. I don't understand.

Q. When was your first entry into the United States? A. In April, 1941.

Q. And did you subsequently leave and then re-enter the United States a number of times? A. Yes.

Q. Did you come to the United States on January 10, 1945? A. Yes, sir.

Q. And on what basis did you enter the United States on that day? A. As a seaman.

Q. Are you married? A. Yes, sir.

Q. And did you subsequently, on the basis of your marriage, apply to the immigration service for a suspension of your deportation? A. Yes, sir.

Q. And did you have a hearing in connection with that application before an immigration and naturalization inspector? A. Yes.

Q. A hearing by the immigration and naturalization service? A. Yes.

Q. And were you subsequently advised by the immigration and naturalization service that they had recommended to Congress that your deportation be suspended? A. Yes.

Q. Were you thereafter advised that on payment of a fee of $18 a record of your entry for permanent residence as of January 10, 1945, would be made? A. Yes.

Q. Did you thereafter pay the sum of $18? A. Yes.

Q. Were you subsequently advised by the immigration and naturalization service that you were eligible to apply for naturalization? A. Yes.

The Court: This order of deportation that has been referred to—was that effected?

Mr. Gollobin: Yes, your Honor. The procedure involves a hearing at which the applicant presents reasons indicating his eligibility for discretional relief and under the law if he is married to a citizen his eligibility for such relief is definite.

The case is then sent to the Central Office and then referred to Congress, and if there is no adverse action by authority the entrant becomes eligible for entry, that is legal entry into the United States.

The Court: When did you get married?

The Witness: 1946.

The Court: To whom?

The Witness: Joan Petrosy.

The Court: Where?

The Witness: New York.

The Court: Since the time of your marriage have you lived with your wife and supported her?

The Witness: Yes, sir.

The Court: Where does she live now?

The Witness: New York.

The Court: What residence?

The Witness: No. 56 LaSalle Street.

The Court: How long have you had that home?

The Witness: We bought a new house about a year and a half ago.

Q. What is your occupation? A. I used to be chief steward on a ship—I used to be a waiter, too.

Q. What is the name of your present employer? A. The Isbrandtsen Steamship Company.

Q. And when did your employment with them commence, the present employment? A. In October—November 11, 1950.

Q. November 11, 1950? A. That is right.

Q. What is the nature of your present employment with the Isbrandtsen Company? A. Chief Steward.

The Court: On what vessel?

The Witness: On the Sir John Franklin.

Q. Did you sign articles in connection with your service aboard that vessel? A. Yes.

Q. And where did you sign the articles? A. New York.

Q. And did you, in accordance with your signing of the articles, sail aboard this ship? A. Yes, sir.

The Court: Do you have a copy of the articles here?

Mr. Noonan: I am sorry, your Honor, we have not but we can get them for you, however. The United States Shipping Commissioner retains the original but we can always get photostats of them.

Q. Did you remain aboard this ship on this foreign voyage? A. Yes.

The Court: When did it leave America?

The Witness: November 18, 1950.

The Court: From what port?

The Witness: New York.

The Court: What was the first stop after New York?

The Witness: From New York we went to Alexandria.

The Court: A freighter, I take it?

The Witness: Yes, sir.

The Court: From Alexandria where did you go?

The Witness: We went to Pakistan, India, Singapore and Kobe, Korea, Yokohama, San Francisco, and back to New York.

The Court: You entered a port in Korea?

The Witness: Yes.

The Court: Which port?

The Witness: Wosan.

The Court: Do you recall the date and the time?

The Witness: No, sir.

The Court: Was cargo discharged there or taken on board?

The Witness: Cargo was discharged.

The Court: Was the port in control of the South Korean Government or the North Korean Government at that time?

The Witness: It was under the control of the United States Army.

The Court: At that time?

The Witness: Yes, sir.

The Court: Proceed.

By Mr. Gollobin:

Q. Did you, in accordance with this trip then return to the Port of San Francisco, on board the Sir John Franklin? A. Yes, sir.

Q. Will you please inform the Court what happened when the vessel arrived in San Francisco, so far as the immigration service is concerned? A. When it arrived that morning the captain informed me that some immigration officer on the ship wanted to question all the Chinese on the ship. We had four Chinese on the ship and they wanted to question them.

I don't know what they questioned them about but then they came to me and they questioned me and I gave them answers and they told me that is all and after that they said they will let me know.

Then after that they told me I would have to stay on the ship.

Q. Did you thereafter, on board this vessel, come to the Port of New York? A. From San Francisco it went to Los Angeles.

Q. Did you remain on board? A. Yes.

Q. And then did the boat come to New York? A. Yes.

Q. And have you also been detained on board in the Port of New York? A. Yes.

Q. Have you applied for naturalization? A. Yes, sir.

Q. When did you file your petition, that is appear with your witnesses and file a petition for naturalization? A. In April, 1950.

Q. And where was this? A. New York City.

Q. At No. 70 Columbus Avenue, the office of the immigration service? A. That is right.

Q. To your own knowledge is this application which was filed by you still pending? A. Yes.

Mr. Gollobin: I might state for the record, your Honor, that there is a motion pending in the Southern District of New York to have this petition calendared

Q. Have you ever been advised by the immigration service that they have any information adverse to you or any information that might be the basis of a proceeding against you? A. No.

Q. When you were questioned in connection with your petition for naturalization was there anything indicated to you that the immigration authorities were in possession of information adverse to you which would preclude you from applying for naturalization? A. No, sir.

Q. In other words, is this the first time since the time that you have come to this country, that you were informed that they are in possession of information adverse to you? A. Yes.

Q. Do you have any basis for knowing in any possible way as to what information might be adverse to you in the way you have conducted yourself or your association? A. No, sir.

Q. So far as you know have you done anything that would preclude you from being naturalized as a citizen of the United States? A. No, sir.

The Court: From the time that you left the Port of New York until you arrived at the Port of San Francisco how much time elapsed?

The Witness: Two days and nights.

The Court: No, no. When you started on your trip from New York, on the voyage, what month was that?

The Witness: November of 1950.

The Court: And you arrived at San Francisco in Mareh?

The Witness: Yes.

The Court: Have you the exact dates, Mr. Neonan?

Mr. Noonan: Your Honor, I think it would help you—an inspection of the immigration department pertaining to seamen aboard this boat, it is dated March 10, 1951, San Francisco.

The Court: And he left November 18, 1950 from the Port of New York?

The Witness: Yes.

Mr. Noonan: That is about the normal voyage, your Honor, they run about four months.

The Court: So he was away about four months?

Mr. Gollobin: Yes, your Honor.

The Court: Do you wish to cross examine, Mr. Siegel?

Mr. Siegel: I respectfully state to the Court that I am not prepared to cross examine the relator because I was relying on the authority that I thought was without question that we are not required to disclose the information we have.

The Court: My question to you was, do you wish to cross examine him?

Mr. Siegel: I do not have the file or the information upon which I can base an intelligent cross examination.

The Court: How soon do you expect to get it?

Mr. Siegel: I have been informed by the immigration representative here that the matter has been referred to the Attorney General for determination and until that time we would not have the file here or any information that we could proceed under.

The Court: Well, when do you expect a decision?

Mr. Siegel: We cannot predict that at all, your Honor. A request was made to expedite this matter in view of the pendency of the writ of habeas corpus and I anticipated the question by the Court and inquired as to when we could reasonably expect it and I was told that there was no way of answering that question. There is nobody fully familiar with that type of procedure who can give me that information. It is a routine matter that goes through various hands.

I might point out to this learned Court at this time that the Attorney General may require that this man be given a hearing by a board of special inquiry. Those things are possible.

On the other hand the Attorney General has the power to deny even a hearing under the regulations.

Now whether he will require a hearing or not, I don't know.

The Court: Well, let me look at that decision. I have it in chambers but if you have a copy I should like to see it.

Mr. Siegel: Yes, your Honor (handing).

The Court: I shall reserve decision on this matter pending the action of the Attorney General and reserving the right to the petitioner to notice this proceeding for a further hearing after action is taken by the Attorney General.

At the same time, Mr. Siegel, I want to make it entirely clear to you that the facts in the *Knauf* case are not the facts in this case. In the *Knauf* case this alien sought admission and had never been a legal resident of the United States.

This petitioner, on the other hand is a legal resident of the United States and I have no authority which would lead me to the conclusion that his absence for a period of four months destroys the legal status of his rights as one who entered legally and who has a legal status by having been admitted legally by the Government of the United States.

Mr. Siegel: May I call the Court's attention to a very similar case, cited in the Northern District of California in 1948 and in that case there are cited many authorities, and I think that it would be enlightening to the Court on the question raised as to whether or not a man who leaves the United States waives his rights.

The Court: I will look at it.

Mr. Siegel: It is *ex parte VanLaiken.*

The Court: Was this case carried to the Court of Appeals?

Mr. Siegel: No, your Honor.

The Court: Well, then, I will not be precluded by that. There is no necessity for an order here. The record shows the disposition of the matter today.

Meanwhile, I suppose he is to go off on a voyage?

Mr. Noonan: The ship is to leave on Wednesday and the crew is to be signed on this afternoon, according to present plans.

The Court: Either the man signs on or he is defaulted, according to this deportation notice. I assume that he will sign on and I assume that he will be four months more on the voyage.

Mr. Siegel: I think I know what is bothering your Honor.

The Court: You do?

Mr. Siegel: It seems that the Court might be disturbed by the fact that this man is going to be detained until the Attorney General makes a ruling?

The Court: Yes.

Mr. Siegel: Well, it has been the practice, your Honor, and the Isbrandtsen Line is familiar with such practice because it has had similar matters before. The Isbrandtsen Line will turn over to Ellis Island the relator until the time the Attorney General may act upon it, at the expense of the Isbrandtsen Line, and that expense is a very nominal one, I think it is about $3 a day for board and lodging.

Now if he does not want to sign on again I think arrangements can be made that this man can be taken over to Ellis Island and stay there until arrangements can be made—whether he gets a hearing before this special board of inquiry or whether or not the Attorney General might want to allow him to enter the United States, whatever the disposition.

Mr. Noonan: Well, would he be permitted to sign on this afternoon and go on this voyage and when he returns in maybe two or three months to have the United States Attorney tell us what his answer on this matter?

Mr. Siegel: As long as he stays with the Master it is perfectly all right with us.

The Court: But I want it understood that signing on for this voyage is not in any way to prejudice his present status.

Mr. Siegel: That is perfectly all right with us as long as the Master is responsible and continues to detain him on board.

The Court: But I do not want to be met with the contention that despite the pendency of this habeas corpus proceeding the relator has again left the United States. As a matter of fact, he is forced to leave since he is on board the vessel in custody of the Master of the vessel and his act in signing on this afternoon, voluntarily, should he, should not prejudice his status.

Mr. Gollobin: Your Honor, can I ask specifically whether this Court will retain jurisdiction on the basis of the pending writ?

The Court: Yes, that is the understanding. I am reserving decision on this proceeding pending the action of the Attorney General and with the right to the petitioner, on due notice to the United States Attorney, to continue the hearing at a proper time.

Mr. Noonan: And that the relator may sign on this afternoon if he so desires and sail with the vessel on this foreign voyage?

The Court: Yes. How long will he be away this time?

Mr. Noonan: I assume the same time, your Honor, it is the same run.

The Court: I think he ought not to be away for more than a year because under the rules if he is away for more than a year his rights will be prejudiced.

Mr. Gollobin: Will the Attorney General continue to act on this application without regard to the fact that the relator continues on this voyage and will rule on his application for admission in the same sense as though he was on Ellis Island in their custody.

Mr. Siegel: That goes without saying. It is the ruling by the Attorney General, not depending on his leaving the United States, it is to determine that he is or is not a security risk.

Mr. Gollobin: Well, the point I make is that the ruling will not be academic.

The Court: Exactly. Under my ruling it will not.

Mr. Noonan: Is there any responsibility on the part of the steamship company, under this ruling, notwithstanding this order to detain and report which we have been served with?

The Court: No.

Mr. Noonan: May he have shore leave, as other people have and then we are not under any obligation to detain him?

I say that to your Honor because I have in my hand an order from the immigration department which requires us to detain and deport and it is because of that that we are in Court with the relator's attorney.

The Court: The representative of the immigration department perhaps can answer the question. Mr. Kramer, do you understand that he would, under the terms of that immigration order, be prevented from going off the ship?

Mr. Kramer: In the United States, yes, your Honor.

The Court: Yes, but once the vessel has left the United States—

Mr. Kramer: No, then we have no control or interest in that.

The Court: What the Isbrandtsen Line's interest is this, I believe: The Sir John Franklin returns and the immigration inspector looks over the crew.

Suppose they do not find the relator? Then it is my understanding, from what you have said, that there is no obligation on the part of Isbrandtsen to produce the body of the relator.

Mr. Kramer: Not so far as the immigration department is concerned, as long as he has not entered the United States.

Mr. Siegel: The Line is responsible if he returns to the United States and is not produced, but as long as he does not leave the ship in any port of the United States then the immigration department has no interest.

Mr. Gollobin: I would like to discuss this matter with the relator, your Honor, privately, so that he understands all this.

The Court: You may do that. We shall take a short recess for that purpose.

(Short recess.)

Mr. Gollobin: Your Honor, I have spoken to the relator and he understands that he will leave and return to this port for disposition under the pending writ on his return.

The Court: And that he is not to leave the ship at any American port.

Mr. Gollobin: Do you understand that?

The Witness: Yes, sir.

(Witness excused.)

The Court: Decision reserved on the writ.

Amended Return to Writ of Habeas Corpus

DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

I, OSWALD I. KRAMER, attorney in the office of the District Counsel, Immigration and Naturalization Service, United States Department of Justice, hereby certify and made an amended return to the Writ of Habeas Corpus, based upon the records of the Immigration and Naturalization Service as follows:

1. The relator, Kwong Hai Chew, is an alien, a native and citizen of China, who last arrived in the United States from a foreign port or place at the port of San Francisco, California, on March 10, 1951, as a member of the crew of the S.S. "Sir John Franklin" and applied for admission to the United States as a returning resident.

2. He was examined on the day of arrival by an immigrant inspector concerning his eligibility for admission into the United States.

3. Upon the basis of information of a confidential nature, the immigrant inspector temporarily excluded the relator under Section 175.57 of Title 8 of the Code of Federal Regulations as an alien whose entry is deemed prejudicial to the public interest.

4. An order was thereupon served upon the master of the S.S. "Sir John Franklin" directing the said master to detain the relator on board said vessel at all United States ports.

5. After the service of the aforesaid order to detain on board, the S.S. "Sir John Franklin" proceeded coastwise, with relator on board, and arrived at the port of New York within the Eastern District of New York on or about March 29, 1951.

6. Upon its arrival at the port of New York, the temporary exclusion of relator was continued and a further order was served upon the master of said vessel on March 30, 1951 to detain the relator on board said vessel at all United States ports.

7. The case was thereafter reported to the Attorney General under the provisions of Section 175.57 of Title 8 of the Code of Federal Regulations for determination of whether relator should be permanently excluded as an alien whose entry will be prejudicial to the public interest.

8. The Acting Attorney General of the United States, on April 18, 1951, under the authority contained in Section 175.57(b) of Title 8 of the Code of Federal Regulations ordered that relator be denied a hearing before a Board of Special Inquiry and that his temporary exclusion be made permanent. (See copy of teletype annexed hereto and made part thereof.)

9. On April 18, 1951 the relator was placed in the custody of the United States Immigration and Naturalization Service at Ellis Island for safekeeping on behalf of the master of the S.S. "Sir John Franklin".

WHEREFORE, it is respectfully prayed that the writ of habeas corpus be dismissed in all respects.

Dated: New York, N. Y.
April 19, 1951.

OSWALD I. KRAMER.

NR 7 Washington 4-18-51 Urgent /Deliver Immediately/ DD NY

Attn District Counsel Your A-6665545 Kwong Hai Chew Order Entered This Date By The Acting Attorney General That Under Authority Contained In 8 CFR 175.57/B/ It Is Ordered That Subject Be Denied A Hearing Before A BSI And His Temporary Exclusion Be Made Permanent.

KELLY.

WF 217P

Amended Traverse to Amended Return

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

Petitioner for his amended traverse to the amended return herein alleges:

1. Repeats each and every allegation of the return, verified the 30th day of March 1951, in paragraphs 3, 4, 5, 6, 7, 8, 9 and 10 thereof with the same force and effect as if stated fully herein.

2. Petitioner has been a resident of the United States for a period of more than ten years, and while such resident applied for and secured a certificate of lawful entry, which was issued to him on or about the 10th day of January 1945 as a result of a proceeding under 8 U. S. C. 155(c), for suspension of deportation. At the time of said application for suspension as aforesaid, the Immigration and Naturalization Serivce was required to and on information and belief did make a thorough examination of the life of the petitioner in this country as to his activities, beliefs, and all other matters involved in his eligibility for suspension of deportation. Since said certificate of lawful entry was issued to him as of January 10, 1945, his conduct, affiliations, beliefs, activities and eligibility have been no different or other, on information and belief, than they were prior to the issuance of the certificate of lawful entry in or about the year 1949.

Amended Traverse to Amended Return

3. Petitioner married a native born citizen of the United States, Joan Petroski, on or about June 22, 1946, and his said wife has been and continues to be wholly dependent upon him for her support and maintenance for the past three years. For a short time after their said marriage, petitioner's wife continued to work, but because of her physical condition, resulting in intermittent dizzy spells, she has been and is unable to maintain any form of employment and has been and continues to be under the care of a physician.

4. That petitioner signed the articles of the S.S. Sir John Franklin, referred to in paragraph 6 of the petition, and that his service on said vessel was satisfactory and that the said vessel was willing to renew and desirous of renewing his said service for another voyage and has only been prevented from so doing because an order of the Coast Guard prevented him from sailing.

5. In or about the month of November 1950, at or about the time he signed said articles heretofore referred to, petitioner was screened and passed by the said Coast Guard, and there has been no conduct on his part which should place him in any different position at this time than he was in November 1950, and upon information and belief it is only because he is being proceeded against by the Immigration and Naturalization Service that the said Coast Guard at this time refuses to permit him to sail.

6. The petitioner has now been transferred to Ellis Island, New York Harbor.

7. The petitioner denies each and every allegation contained in the following paragraphs of the amended

return to the writ of habeas corpus: Paragraphs 1, 2 and 3; and denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs 4, 5, 6, 7 and 8 of said amended return.

8. The immediate release of the petitioner is essential to the well-being of his wife, a citizen of the United States, and his present detention under 8 C. F. R. 175.57, if that is in truth and in fact the grounds of his present detention, is arbitrary and unreasonable in view of the fact that said section relates to and is concerned with an incoming alien, whereas in truth and in fact the petitioner is a resident of the United States and this proceeding to exclude him as prejudicial to the best interests of the United States is a device and sham in order to effect his deportation without the issuance of a warrant of arrest and without the conduct of any hearing as required by law.

9. The petitioner has a pending motion for the calendaring of his naturalization, duly filed in the United States District Court for the Southern District of New York and scheduled to be heard on the first day of May 1951; and whatever issues are involved in the present proceeding can be more appropriately judicially determined by a Judge of the United States District Court for the Southern District of New York than by the Attorney General acting secretly and without hearings in the case of a resident of this country, thereby seeking to deprive the said Court of jurisdiction.

10. There is nothing in the naturalization laws either before or after the passage of the Internal Security Act of 1950 (P. L. 831, 81st Cong., 2d Sess., 8 U. S. C., § 729) to preclude the hearing and determination of your petitioner's application for naturalization.

Amended Traverse to Amended Return

11. Your petitioner is, as aforesaid, a resident of the United States. Prior to his residence in this country, on information and belief he had been and was a resident and native of China. That under present conditions it is impossible to secure travel documents to send the petitioner to China, and he cannot be sent there or to any other country without such travel documents.

12. On information and belief no other country has been in the past or is today willing to permit the United States to send to its shores and dump a resident of the United States merely because this country cannot effect his deportation to his country of origin. In that connection the attention of the Court is directed to the decision of Judge WILLIAM BONDY in the case of Michael Dzuro (*Dzuro v. District Director*, U. S. D. C., S. D. N. Y., Civ. 63-77, Feb. 2, 1951, not yet reported) in which it was stated by the Court that the alien had not been detained for too long a period, in that case a period of approximately six weeks prior to the argument on the writ of habeas corpus. However, as soon as a letter was received by counsel for the said alien indicating that he could not be returned to his native Czechoslovakia, Dzuro was and he now is released and enlarged on $1,000 bail.

13. In the case at bar petitioner does not assert that his period of detention has been too long, but that in truth and in fact detention of any kind is unlawful and an abuse of discretion and a violation of due process. The only country to which the petitioner could normally be sent is the People's Republic of China, a country to which he not only has no travel documents but which does not even have diplomatic or consular relations with the United States so that the petitioner cannot be sent to that country within

the foreseeable future and unless released on bail will languish in custody at Ellis Island for months, if not years to come.

14. The Immigration and Naturalization Service, unable to rid this country of a man who gave some of the best years of his life to its service, seeks to have the steamship company carry out functions which do not belong to it and which the Service itself cannot carry out, to wit, the dumping the petitioner in some country other than the United States, where he had resided for so many years and in which his sick and dependent wife resides.

WHEREFORE, petitioner prays that the writ of habeas corpus herein be sustained and that the petitioner be released on reasonable bail or without bail.

KWONG HAI CHEW,
Petitioner,

By: IRA GOLLOBIN,
Attorney for Petitioner.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

IRA GOLLOBIN, being duly sworn, says: I am the attorney for the petitioner herein. I have read the foregoing amended traverse and the facts therein stated are true to the best of my own knowledge except as to the matters stated to be alleged on information and belief, and as to those matters I believe it to be true. The basis of my information and the grounds of my belief are conversations

with the petitioner and his wife, as well as examination of the documents in petitioner's possession. The reason why this amended traverse is being signed and verified by me as attorney is because petitioner is in actual custody at Ellis Island and there is considerable difficulty in securing his signature; also many of the matters taken up are matters of law with which I am more familiar than he is.

IRA GOLLOBIN.

Sworn to before me this
23rd day of April, 1951.

HENRIETTA ADLER
Notary Public, State of New York
Qualified in Bronx County
No. 03-0021000
Certs. filed in New York and Bronx
Clerks and Registers Office
Commission Expires March 30, 1953

Opinion

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

M—1528

May 11, 1951

Appearances:

IRA GOLLOBIN, Esq., Attorney for Relator.

FRANK J. PARKER, United States Attorney, Attorney for Respondent, Edw. J. Shaughnessy, *et al.*

MORRIS E. SEIGEL, Esq., Assistant United States Attorney.

LOUIS STEINBERG, Esq., District Counsel, United States Department of Justice, Immigration and Naturalization Service.

MAX BLAU, Esq., Attorney, United States Department of Justice, Immigration and Naturalization Service, of Counsel.

GALSTON, *D. J.*

The facts developed at the hearing on the return of this writ of habeas corpus are substantially agreed upon.

It appears that the relator is of the Chinese race, having originally arrived here in 1941 as a seaman. Following his occupation, he made entries as a seaman until January 10, 1945. On June 22, 1946 he married a native born citizen of the United States, and subsequently applied for and secured suspension of a deportation order. At that

time the Immigration and Naturalization Service made an investigation, as a result of which they found him eligible for discretionary release of the order of deportation.

In November 1950 he signed articles for service as a seaman on the S.S. "Sir John Franklin", and at that time he was screened by the Coast Guard and passed by them. On the return of the vessel, on the voyage which began in November 1950, he was detained on the vessel when it docked at Pier 7, Bush Terminal, Brooklyn, New York, on March 29, 1951, and was held upon the instructions of the Immigration and Naturalization Service without bail.

He seeks to be relieved of what he claims is an arbitrary and capricious restraint and a denial of due process of law in violation of the Fifth Amendment of the Constitution, and seeks a determination of this Court with respect to the legality of his restraint.

The return of the writ of habeas corpus, filed by the United States on behalf of the Immigration and Naturalization Service, alleges that the relator is an alien, a native and citizen of China, who last arrived in the United States at the port of San Francisco on March 10, 1951 as a member of the crew of the "Franklin", for the purpose of resuming residence in the United States after a voyage abroad. He was examined on that day by an immigration inspector concerning his eligibility for admission into the United States. On the basis of information of a confidential nature, the immigration inspector temporarily excluded the relator under section 175.57 of Title 8 of the Code of Federal Regulations as an alien whose entry is deemed prejudicial to the public interest. Thereupon an order was served upon the master of the vessel asking him to detain the relator on board the vessel at all United States ports. Thereafter the "Franklin" proceeded coastwise and arrived at the port of New York on March 29, 1951. Upon its arrival the

temporary exclusion of the relator was continued, and a further order served on the master on March 30, 1951 to detain the relator on board the vessel at all United States ports. Under the provisions of the federal regulations referred to, the case was reported to the Attorney General for determination as to whether the relator should be excluded permanently as an alien whose entry would be prejudicial to the public interest.

On the return of the writ of habeas corpus on April 16, 1951, it appeared that the Attorney General had not yet reached a determination, and accordingly the proceedings were continued to await such determination.

On April 19, 1951, Oswald I. Kramer, an attorney in the office of the District Counsel, Immigration and Naturalization Service of the Department of Justice, executed and filed an amended return to the writ of habeas corpus, which recites that on April 18, 1951, the Acting Attorney General of the United States, under the authority contained in section 175.57(b) of Title 8 of the Code of Federal Regulations, ordered that the relator be denied a hearing before a board of special inquiry, and that his temporary exclusion be made permanent. On the same day the relator was placed in the custody of the Immigration and Naturalization Service on Ellis Island for safe keeping on behalf of the master of the "Franklin".

The amended traverse to the amended return sets up some new matter which is alleged to support legal inferences sought to be drawn by the petitioner.

It appears that the petitioner served in the merchant marine of the United States during the Second World War, and is in possession of a letter from the President of the United States thanking him for his war service. The amended traverse also alleges that in November 1950, the

petitioner was screened and passed by the Coast Guard, and that there has been no conduct on his part which would place him in any different position at this time than he was in at that date.

Petitioner has a pending motion in the United States District Court for the Southern District of New York to place his petition for naturalization on the calendar. He asserts that prior to his residence in this country he was a resident and native of China, and that under present conditions it would be impossible to secure travel documents to send the petitioner to China.

The sole question for determination by this Court is whether the petitioner is in lawful custody. At first blush it would seem extraordinary that one legally residing in this country, even though an alien, could be barred from re-entry and ordered deported in the absence of any hearing before any board. Basically the question is whether this Court has jurisdiction to review the act of the Acting Attorney General in the circumstances. It would almost seem that in the absence of a statutory bar, explicit or implicit, such proceedings on the part of an officer of the Government would be in the nature of a star chamber determination.

The Presidential Proclamation No. 2523 of November 14, 1941 (2 C. F. R., 1943, 270-272) provides that no alien shall enter the United States unless he is in possession of a valid, unexpired permit to enter, and further, no alien shall be permitted to enter if it appears to the satisfaction of the Secretary of State that such entry would be prejudicial to the interests of the United States as provided in the rules and regulations authorized to be prescribed by the Secretary of State with the concurrence of the Attorney General. By a later proclamation, issued August 17, 1949, No. 2850 (14 Fed. Reg. 1543), the Proc-

lamation No. 2523 was amended so as to bar any alien from applying for admission even with a valid permit to enter, if it appears to the satisfaction of the Attorney General that such entry would be prejudicial to the interests of the United States.

Section 175.53, Title 8, Code of Federal Regulations, specifies the classes of aliens whose entry into the United States is deemed to be prejudicial to the public interest; and section 175.57 of the same title provides, in subparagraph (b), that the Attorney General, in the case of an alien temporarily excluded by an official of the Department of Justice on the ground that he is or may be excludable under one or more of the categories set forth in section 175.53, may deny the alien a hearing before a board of special inquiry.

Now as to the interpretation, effect and validity of these regulations: it must be observed that the admission of aliens is a privilege granted upon such terms as the United States may prescribe, *Nishimura Ekiu* v. *United States*, 142 U. S. 651; *Fong Yue Ting* v. *United States*, 149 U. S. 698; and more particularly a late case which has aroused much public interest, *Knauff* v. *Shaughnessy*, 338 U. S. 537. Section 175.57 was considered in the *Knauff* v. *Shaughnessy* case. The import of the opinion in that case is that "when Congress prescribes a procedure concerning the admissability of aliens, it is not dealing alone with a legislative power; it is implementing an inherent executive power. Thus the decision to admit or to exclude an alien may be lawfully placed with the President, who may in turn delegate the carrying out of this function to a responsible executive officer of the sovereign, such as the Attorney General." The opinion adds, "The action of the executive officer under such authority is final and conclusive. What-

ever the rule may be concerning deportation of persons who have gained entry into the United States, it is not within the province of any court, unless expressly authorized by law, to review the determination of the political branch of the Government to exclude a given alien."

In the *Knauff* case, the Attorney General concluded, on the basis of confidential information, that the public interest required that the petitioner be denied the privilege of entry into the United States, and he denied the petitioner a hearing on the matter because in his judgment the disclosure of the information on which he based that opinion would itself endanger the public security.

The petitioner in this case seeks to differentiate his position from that of the petitioner in *Knauff* v. *Shaughnessy*, but in essence their status is the same. They are both aliens, and the fact that prior to his shipping on the S.S. "Sir John Franklin" he was a legal resident of this country does not diminish the authority of the Attorney General on the one hand, nor on the other does it give judicial review where the Congress failed to establish such jurisdiction in the Court. However powerful the dissenting opinions were in *Knauff* v. *Shaughnessy*, this Court is, of course, constrained to act in accordance with the decision of the Court.

Finally it must be pointed out that the Government's position that a resident alien seeking admission to the United States upon his return from abroad is subject to all exclusion provisions of the immigration laws is sound. Each return of an alien from abroad is a new entry, *United States* v. *Smith*, 289 U. S. 422; *United States, ex rel. Roovers* v. *Lessler*, 3 Cir., 90 Fed. (2d) 327; *McCandless* v. *United States, ex rel. Pantoja*, 3 Cir., 44 Fed. (2d) 786; *United States, ex rel. Siegal* v. *Reimer*, 23 Fed. Supp. 643.

In *Lewis* v. *Frick*, 233 U. S. 291, which discussed the case of the return of an alien previously domiciled in this country, it was said:

> "* * * if he departed from the country, even for a brief span of time, and on re-entry brought to the country a woman for the purpose of prostitution or other immoral purpose, he subjected himself to the operation of the clauses of the Act that relate to the exclusion and deportation of aliens, the same as if he had no previous residence or domicile in this country."

See also *Lapina* v. *Williams*, 232 U. S. 78.

I find also that the relator's deportation under the exclusion order has not been unreasonably delayed.

Finally the pendency of his petition for naturalization is no bar to deportation in the circumstances recited. See Internal Security Act of 1950, sec. 27 (8 U. S. C. A., sec. 729(c)), which prohibits the naturalization of any person "against whom there is outstanding a final finding of deportability * * *". See also *United States, ex rel. Jankowski* v. *Shaughnessy*, 186 Fed. (2d) 586.

Accordingly the writ of habeas corpus will be dismissed and the relator remanded to the custody of the respondents. The conclusion is reached with some reluctance, not because the Court has not the power of judicial review under the statute, but rather on the ground that the relator who, after a period of ten years, up to November 1950, when he shipped on the S.S. "Franklin", had been a legal resident of the United Sfates, is now about to be deported without knowing what charge has been levelled against him. Settle order.

GALSTON,
U. S. D. J.

Order Dismissing Writ of Habeas Corpus

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

The writ of habeas corpus in the above-entitled proceeding having come on to be heard before this Court on the 16th, 17th and 18th days of April 1951, and after hearing Ira Gollobin, Esq., attorney for relator, in support of the writ, and Frank J. Parker, United States Attorney for the Eastern District of New York (Morris K. Siegel, Esq., Assistant United States Attorney, of counsel) and Lord, Day & Lord, Esqs. (John T. Noonan, Esq., of counsel) in opposition thereto, and upon the petition for the writ, the amended return thereto, and all the papers and proceedings had herein, and the Court having filed its decision in writing on May 11, 1951, it is

ORDERED, that the writ of habeas corpus herein be and the same hereby is dismissed, and it is

FURTHER ORDERED, that the relator be and he hereby is remanded to the custody of the respondents.

Dated: Brooklyn, New York
May 21, 1951

/s/ CLARENCE G. GALSTON,
U. S. D. J.

Notice of Appeal

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *ex rel.*, KWONG HAI CHEW,

Relator-Appellant,

against

CAPT. SVEND COLDING, Master of the S.S. "Sir John Franklin," and EDWARD J. SHAUGHNESSY, District Director of Immigration and Naturalization at the Port of New York, *et al.*,

Respondents-Appellees.

Sirs:

You and each of you will please take notice that Kwong Hai Chew, the relator-appellant in the above entitled matter, hereby appeals to the United States Court of Appeals for the Second Circuit from the order of Honorable CLARENCE G. GALSTON, one of the Judges of the United States District for the Eastern District of New York, made and entered herein on the 21st day of May 1951, dismiss-

ing the petition for a writ of habeas corpus filed herein and remanding the relator-appellant to the custody of the respondents.

Dated: New York, N. Y., May 28, 1951.

IRA GOLLOBIN,
Attorney for Relator-Appellant,
Office & P. O. Address,
1441 Broadway,
New York 18, N. Y.

To: *Clerk of the United States District Court*
Eastern District of New York.

FRANK J. PARKER, ESQ.,
United States Attorney,
Attorney for Respondent-Appellee,
EDWARD J. SHAUGHNESSY, *et al.*

Stipulation As to Record

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *ex rel.*
KWONG HAI CHEW,

Relator-Appellant,

against

CAPT. SVEND COLDING, Master of the S.S. "Sir John Franklin," and EDWARD J. SHAUGHNESSY, District Director of Immigration and Naturalization at the Port of New York, *et al.*,

Respondents-Appellees.

IT IS HEREBY STIPULATED AND AGREED, that the foregoing is a correct transcript of the record in the said District Court in the above-entitled matter, as agreed on by the parties.

Dated: New York, July 6, 1951.

IRA GOLLOBIN,
Attorney for Relator.

FRANK J. PARKER,
United States Attorney,
Attorney for Respondent,
Edward J. Shaughnessy.

Clerk's Certificate

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *ex rel.*
KWONG HAI CHEW,

Relator-Appellant,

against

CAPT. SVEND COLDING, Master of the S.S. "Sir John Franklin," and EDWARD J. SHAUGHNESSY, District Director of Immigration and Naturalization at the Port of New York, *et al.*,

Respondents-Appellees.

I, PERCY G. B. GILKES, Clerk of the United States District Court, for the Eastern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court, in the above-entitled matter, as agreed on by the parties.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed at the City of New York, in the Eastern District of New York, this day of July 1951.

PERCY G. B. GILKES,
Clerk.

(SEAL.)

[fol. 51] UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1951

No. 50

Argued November 7, 1951 Decided December 4, 1951

Docket No. 22095

UNITED STATES OF AMERICA, ex rel. KWONG HAI CHEW, Relator-Appellant,

v.

CAPT. SVEND COLDING, Master of the S.S. "Sir John Franklin," and EDWARD J. SHAUGHNESSY, District Director of Immigration and Naturalization at the Port of New York, Respondents-Appellees.

Before Swan and Frank, Circuit Judges and Coxe, District Judge

Appeal from the United States District Court for the Eastern District of New York.

From an order dismissing a writ of habeas corpus and remanding the relator to the custody of the respondents, the relator appeals. Affirmed.

[fol. 52] Ira Gollobin, Attorney for appellant; Carol King, of counsel.

Frank J. Parker, United States Attorney; Morris K. Siegel, Assistant United States Attorney; Louis Steinberg, District Counsel, and Max Blau and Oswald I. Kramer, Attorneys, United States Department of Justice, Immigration and Naturalization Service, for appellees.

SWAN, Chief Judge:

This is an appeal from dismissal of a writ of habeas corpus sued out by a resident alien who was excluded from readmission to the United States by the immigration authorities upon the return from a voyage to foreign ports of the ship on which he served as a member of the crew. The facts, none of which is disputed, are well stated in the

opinion of the District Court and need not be here repeated.[1]

Knauff v. *Shaughnessy*, 338 U. S. 537 sustained the power of the Attorney General to exclude an alien without a hearing, on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest, and held the action of the Attorney General final and conclusive. The appellant attempts to distinguish the *Knauff* case on the ground that he, unlike Mrs. Knauff, had previously been legally admitted for residence in the United States and was seeking readmission. The asserted distinction is not valid. A resident alien who voluntarily goes to a foreign country is subject upon his return to all [fol. 53] the excluding provisions of the immigration laws, "the same as if he had had no previous residence or domicile in this country." *Lewis* v. *Frick*, 233 U. S. 291, 297.[2] Equally without merit is the argument that the Regulations under which the Attorney General acted[3] were not intended to apply to aliens returning to a previously established legal residence. The purpose of the Presidential Proclamations and of the Regulations was the exclusion of aliens whose presence was deemed inimical to the national security. In the accomplishment of this purpose there is no reason to differentiate between aliens who seek reentry and those who seek entry for the first time. See *Ex parte Van Lacken* (N. D. Cal.), 81 F. Supp. 79, 81; *United States ex rel. Johns* v. *Shaughnessy*, unreported (S. D. N. Y. Civ. 53-49, Dec. 5, 1949). Indeed, an alien seeking reentry might well be thought to have the better opportunity to do damage, if so disposed.

It is next contended that Proclamation 2523 as amended and 8 C. F. R. § 175.57 are no longer in effect because repealed by the Internal Security Act of 1950. We think not. The 1950 statute makes no reference to the 1918

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[1] *United States* v. *Colding*, 97 F. Supp. 592. See also the related opinion denying the relator bail. 98 F. Supp. 717.

[2] Additional authorities to the same effect are cited in the opinion below, 97 F. Supp. 592 at 595.

[3] Title 8, Code of Federal Regulations, 1949 ed., §§ 175.53 and 175.57.

Act as amended, 22 U. S. C. A. § 223, nor to the Presidential Proclamations promulgated thereunder, nor to the Regulations which implement the Proclamations. It is elementary that repeals by implication are not favored.[4] We see no such repugnancy between the prior law and the 1950 statute as would justify holding that the Proclamations and their implementing Regulations have been impliedly repealed.

Finally the appellant urges that he should not be deported until his pending petition for naturalization has [fol. 54] been acted upon. Section 27 of the Internal Security Act of 1950, 8 U. S. C. A. § 729(c), forbids the naturalization of any person "against whom there is outstanding a final finding of deportability * * *". The regulation under which the Attorney General acted, 8 C. F. R. § 175.57, provides that an alien excluded thereunder shall be deported. The verbal argument of the appellant that the order of exclusion is not a "final finding of deportability" merits no further discussion. *Cf. United States v. McGrath*, 2 Cir., 181 F. 2d 839, 841, judgment vacated on the ground that the cause is moot, 340 U. S. 940.

Order affirmed.

[4] *Georgia v. Pennsylvania R. Co.*, 324 U. S. 439, 456-7.

[fol. 55] UNITED STATES COURT OF APPEALS, SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 4th day of December one thousand nine hundred and fifty-one.

Present: Hon. Thomas W. Swan, Chief Judge; Hon. Jerome N. Frank, Circuit Judge; Hon. Alfred C. Coxe, District Judge.

U. S. ex rel. KWONG HAI CHEW, Relator-Appellant,

v.

CAPT. SVEND COLDING, Master "Sir John Franklin" & E. J. SHAUGHNESSY, District Director, etc., Respondents-Appellees

Appeal from the District Court of the United States for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Eastern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Alexander M. Bell, Clerk.

[fol. 56] [Endorsed]: United States Court of Appeals, Second Circuit. U. S. ex rel. Kwong Hai Chew v. Capt. Svend Colding, Master "Sir John Franklin" & E. J. Shaughnessy, etc., 50. Judgment. United States Court of Appeals, Second Circuit. Filed Dec. 4, 1951. Alexander M. Bell, Clerk.

[fol. 57] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 58] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 617

KWONG HAI CHEW, Petitioner,

vs.

CAPTAIN SVEND COLDING, Master of the SS "Sir John Franklin," and EDWARD J. SHAUGHNESSY, Etc.

ORDER ALLOWING CERTIORARI—Filed April 28, 1952

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.